UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AEOLUS DOWN, INC. Plaintiffs, v. CREDIT SUISSE INTERNATIONAL Defendant.	Civil Action No.__________ **COMPLAINT FOR BREACH OF CONTRACT, TORTIOUS BREACH OF CONTRACT AND DECLARATORY INJUNCTIVE RELIEF AND DAMAGES** **Jury Trial Demanded**

Plaintiff, Aeolus Down, Inc, avers as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for Breach of Contract, Tortious Breach of Contract and Declaratory Relief.

2. This Court has original subject matter jurisdiction over all claims pursuant to 28 U.S.C. §§ 1331.

3. This Court has personal jurisdiction over Defendant.

4. Venue is proper in this District pursuant to U.S.C. §§ 1391(a), (b) and one of (c).

PLAINTIFF AND PLAINTIFF'S BUSINESS

5. Plaintiff Aeolus Down, Inc. ("ADI"), is a duly licensed California corporation with its principal place of business in Chino, California and doing business in New York, New York.

6. ADI's principal business is the manufacturing and wholesaling of materials such as comforters, pillows, and bedding, among other things.

DEFENDANT AND DEFENDANT'S BUSINESS

7. Defendant Credit Suisse International ("CSI") is an unlimited liability company domiciled in Switzerland, doing business in New York, New York.

8. CSI is a wholly owned subsidiary of Credit Suisse Group specializing in Investment Banking, Private Banking, Asset Management and Accounts Receivable Insurance, among other things.

INTRODUCTION

9. On October 8, 2007 ADI and CSI entered into a Master Claims Purchase Agreement ("Insurance Policy") for the purpose, among other things, of insuring ADI against the default in payment of accounts receivable, a true and correct copy of which is attached hereto as **Exhibit 1**. Concurrently, the parties executed a Confirmation Agreement under which the terms of the Insurance Policy were applied to ADI's trade account with Linens N Things, Inc. for the period between January 1, 2008 and June 30, 2008, a true and correct copy of which is attached hereto as **Exhibit 2**.

10. ADI initially paid $627,500.00 for the contract, and an additional payment of $24,000.00 was made by ADI for an increase in the dollar limit of the protection on February 7, 2008, a true and correct copy of which is attached hereto as **Exhibit 3**.

11. On May 2, 2008 Linens Holding Co. and related companies filed bankruptcy petitions under Chapter 11. Among the 13 entities that filed petitions at that time were Linens N Things, Inc. and LNT Merchandising, LLC, true and correct copies of which are attached hereto as **Exhibits 4 and 5,** respectively.

12. The bankruptcy filing of Linens N Things, Inc. constituted a Specified Event under the Insurance Policy and Confirmation and the event occurred within the contract period. Since ADI's receivable with Linens N Things, Inc. exceeded $3.8 million at the time of the petition, it should have been entitled to recover the maximum $2.3 million payment available under the Insurance Policy, the October 2, 2007 Confirmation, and the February 7, 2008 Confirmation as they provide for an occurrence of a Specified Event in May 2008.

13. LNT Merchandising LLC may be an internal accounting entity used by Linens Holding Co. Although ADI never did any business with that entity, all of the debt that was owed to ADI by Linens N Things, Inc. was initially listed in the Schedule of Assets and Liabilities as a liability of LNT Merchandising, a true and correct copy of which is attached hereto as **Exhibit 6**. Conversely, the Linens N Things, Inc. schedule did not reflect any part of the debt, a true and correct copy of which is attached hereto as **Exhibit 7**.

14. Despite this omission, ADI submitted a timely Proof of Claim in the bankruptcy of Linens N Things, and a copy of the Proof of Claim was duly submitted to CSI on July 31, 2008, a true and correct copy of which is attached hereto as **Exhibit 8**. This was well within the 25-day deadline provided for under Section 5 of the Insurance Policy.

15. On August 5, 2008, just four calendar days before the expiration of the 25-day period, outside counsel for CSI forwarded a form of Assignment of Claim Agreement to ADI's counsel with a request that it be executed and returned, a true and correct copy of which is attached hereto as **Exhibit 9**. However, the form's contents were premised upon the erroneous scheduling of the ADI receivable. CSI's form of assignment specified that the Schedule Purchase Price would be based upon the total ADI receivable that was scheduled *in the Linens N Things bankruptcy* at that time. Since the scheduled ADI debt in the initial Linens N Things, Inc. Schedule of Assets and Liabilities was zero because the receivable had been incorrectly listed in the LNT Merchandising schedule instead, the form of assignment prepared by CSI required ADI to agree that CSI would make *no immediate payment* to ADI. Instead, under the "Additional Purchase Price" stipulation it would pay ADI only if and when a recovery of more than zero was finally obtained in the bankruptcy court, a contingency that would probably occur only years in the future if it was to occur at all.

16. As a result, ADI could not execute the assignment in its present form, and ADI's counsel notified CSI of its dilemma on August 12, 2008. In response, CSI's counsel advised ADI's counsel that the protection that was purchased applied only to "claims against Linens N Things, not LNT Merchandising.", a true and correct copy of which is attached hereto as **Exhibit 10**.

17. On September 12, 2008, an amendment to the initial schedules was filed by Linens N Things. In the amendment, the receivables of numerous trade vendors including ADI were moved from the LNT Merchandising schedule to the one for Linens N Things, Inc. , a true and correct copy of which is attached hereto as **Exhibit 11**. Citing this amendment, On October 12,2008, ADI requested a revised version of the Assignment Agreement that would permit it to assign its receivable account and collect the $2.3 million in protection that it had purchased from CSI, a true and correct copy of which is attached hereto as **Exhibit 12**.

18. On October 14, 2008, for the first time, CSI's outside counsel then advised ADI that the Insurance Agreement had been cancelled due to the failure of ADI to execute the (incorrect) Claims Assignment Agreement within the 25-day window allowed for under Section 5. On this rationale, CSI refused to provide ADI with an amended form of the assignment, a true and correct copy of which is attached hereto as **Exhibit 13**.

CLAIMS FOR RELIEF

COUNT I
(Breach of Contract)

19. Plaintiff realleges, and incorporates by reference, paragraphs 1 – 18 as if set forth herein.

20. On or about October 2, 2007, in consideration of the payment of a premium of $627,500.00, made by ADI, Defendant, CSI, by its duly authorized agents, executed and delivered to ADI CSI's Insurance Policy, in, and by which, CSI undertook and did insure ADI, as the named insured, for payment of defaulted accounts receivable by Linens N Things. The Insurance Policy by its terms was effective for specified events occurring from 12:01 a.m. on January 1, 2008, to 12:01 a.m. July 1, 2008.

21. On or about July 31, 2008, ADI submitted notice to CSI of the above-described loss resulting from the Linens N Things default of its accounts receivable and bankruptcy filing, and by reason thereof under the terms of the

Insurance Policy, ADI became entitled to receive from CSI, and CSI became obligated to pay to ADI the losses incurred by ADI in a sum in excess of $2.3 Million.

22. ADI has performed all conditions of the policy on its part to be performed and, in accordance with the terms of the Insurance Policy, gave CSI due and timely notice and proof of claim.

23. ADI has demanded payment of the sum of $2.3 Million, as alleged hereinabove, but CSI has wrongfully failed and refused, and continues to wrongfully fail and refuse, to pay ADI that sum or any part of it, and there is now due and owing from CSI, to ADI the approximate sum of $2.3 Million, the exact amount of which to be proved at the time of trial.

24. As a proximate result of the failure and refusal of CSI as herein alleged, ADI has been damaged in the sum of $2.3 Million, or such other sum according to proof at the time of trial, with interest on said sum at the legal rate from CSI's breach on September 2008, the date on which CSI notified ADI in writing of CSI's denial of coverage under the Insurance Policy for ADI's above-described claim.

Count II
(Tortious Breach of Insurance Contract)

25. Plaintiff realleges, and incorporates by reference, paragraphs 1 though 24 as if set forth herein.

26. At all times herein mentioned, ADI had in full force and affect a written accounts receivable Insurance Policy issued to ADI by CSI. Implied in the Insurance Policy was a covenant by CSI that it would act in good faith and deal fairly with the insured, and that it would do nothing to interfere with the rights of

the insured to receive the benefits of the agreement.

27. The Insurance Policy, among other things, provided liability and damage coverage in connection with Linens N Things, Inc. bankruptcy filing and default under its accounts receivable of the kind described hereinabove.

28. By the provisions of the Insurance Policy, CSI represented to ADI that, if ADI complied with all the terms and conditions of the insurance policy, CSI would pay the costs incurred and damages sustained by ADI up to the Insurance Policy's limit in connection with Linens N Thing, Inc. bankruptcy filing and default under its accounts receivable of the kind described hereinabove.

29. The above-stated representation of CSI in its Insurance Policy was false and fraudulent in that CSI never intended to pay the losses incurred and damages sustained by ADI in connection with Linens N Things, Inc. of the kind described hereinabove, which are clearly covered under the Insurance Policy. At the time CSI entered into the Insurance Policy with ADI, CSI wilfully concealed the above facts, all for the purpose of defrauding and deceiving ADI and inducing it to purchase the Insurance Policy.

30. ADI, at the time the representation was made by CSI, believed it to be true, and, in reliance on it, was induced to, and did, enter into the insurance contract with CSI; had ADI known the true facts, it would not have purchased the policy.

31. At all times herein relevant, CSI knew that ADI was legally entitled to recover the monetary damages sustained by ADI under the terms of the Insurance Policy, and that CSI was, therefore, obligated to pay ADI the sum of $2.3 million, or such other sum according to proof at the time of trial.

32. ADI has demanded payment of the sum of $2.3 million, as alleged

hereinabove, but CSI, and notwithstanding its knowledge of its obligation to pay ADI under the terms of the Insurance Policy, has wrongfully failed and refused, and continues to wrongfully fail and refuse, to pay ADI that sum or any part of it, and there is now due and owing from CSI to ADI the sum of $2.3 million, or such other sum according to proof at the time of trial.

33. In committing the acts described hereinabove, CSI acted in conscious disregard of the rights of ADI and was guilty of malice, oppression or fraud in that the above-described loss is clearly covered under the terms of the Insurance Policy as negotiated by the parties thereto. The conduct of CSI warrants an assessment of punitive damages in an amount appropriate to punish CSI and deter others from engaging in similar wrongful conduct.

COUNT III
(Declaratory Relief)

34. Plaintiff realleges, and incorporates by reference, paragraphs 1 – 33 as if set forth herein.

35. Based upon the foregoing, an actual controversy has arisen regarding the enforceability and validity of the Insurance Policy.

36. ADI is informed and believes that CSI will continue to reject the notice of claim as alleged hereinabove, which will likely result in irreparable detriment to ADI.

37. By reason of the foregoing controversy and circumstances, ADI respectfully request that this Court make a judicial determination that the notice of claim requirements in the Insurance Policy have been fully and/or substantially complied with by ADI thereby entitling ADI to the relief requested herein.

WHEREFORE, Plaintiff Aeolus Down, Inc prays for judgment against Defendant Credit Suisse International as follows:

1. For compensatory damages in the amount of at least $2.3 Million Dollars ($2,300,000.00);

2. For a declaration that Defendant that the notice of claim requirements in the Insurance Policy have been fully and/or substantially complied with by ADI thereby entitling ADI to the relief requested herein;

3. For Plaintiffs' costs, including reasonable attorneys' fees;

4. For punitive damages;

5. For pre- and post-judgment interest according to law; and

6. For such other and further relief as the Court may deem just and proper.

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